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Paper No. 4

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OFFICE OF PETITIONS

In re Application of Stephen Chin Application No. 10/045,313 Filed: October 24, 2001

DECISION ON PETITION

Title: INTERNET-BASED MONETARY PAYMENT:

SYSTEM

This is a decision on the petition filed March 2°, 2002, to accord the above-identified application a filing date of October 24, 2001, with pages 7 and 8 of the specification as a part of the original disclosure.

Application papers in the above-identified application were filed on October 24, 2001. However, on March 1, 2002, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Item(s) in a Nonprovisional Application." Applicant was notified that pages 7 and 8 of the specification appeared to have been smitted from the application.

In response, on March 27, 2002, applicant filed the present petition to accord a filing date of October 24, 2001, with pages 7 and 8 of the specification as part of the original disclosure. Applicant asserted that pages 7 and 8 were with the application as diginally filed on October 24, 2001. As proof thereof, applicant somitted a copy of a date-stamped postcard receipt, indicating that the following items were received by the PTO on October 24, 2001: (1) Utility Patent Application Transmittal; (2) Fee Transmittal; (3) Preliminary Amendment; (4) Application Data Sheet; (5) Copy of Declaration and Power of Attorney from parent; and (6) Patent Application.

A postcard receipt which itemizes and properly icentifies the items which are being filed serves as prima facie evidence of receipt in the Office of the items. See MPEP 503. Here, the postcard receipt does not identify the number of pages of the specification. The postcard receipt does acknowledge receipt of the Utility latent Transmittal. Examination of the Utility Patent Transmittal denotes 11 pages of specification. However, a postcard receipt which references a transmittal letter only serves as evidence of receipt in the Office of the transmittal letter, and not of items which are listed on the transmittal letter.

The PTO file is the official record of papers or ginally filed in this application. A review of the official file reverts that pages 7 and 8 of the specification were not filed on October 2. 2001, since those pages are not present in the file. An applicant alleging that a paper was filed in the PTO and later misplaced has the purden of proving the allegation by a preponderance of the evidence.

Because pages 7 and 8 of the specification were rot present on October 24, 2001, the date the application was filed, pages 7 and 8 cannot be

considered a part of the original disclosure of the application. Accordingly, the application cannot be accorded the filing date of October 24, 2001, with pages 7 and 8 as a part of the original disclosure.

Accordingly, the petition is **DISMISSED**.

The petition fee will not be refunded to petition ar.

Pages 7 and 8, submitted as part of the original disclosure of the parent application, will <u>not</u> be entered at this time. However, because the parent application disclosure was incorporated by reference in the above-identified application, applicant may submit pages 7 and 8 as an amendment to be considered by the examiner. Applicant should submit the amendment prior to the first Office action to avoid delays in the prosecution of the application. I

Any request for reconsideration of this decision should be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

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Washington, D.C. 20231

By FAX:

(703) 308-6916 Attn: Office of Petitions

By hand:

Office of Petitions 2201 South Clark Place

Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

The application file will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of October 24, 2001, using the pages of the specification filed on that date.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

Beverly M. Flanagan Supervisory Petitions Examiner Office of Petitions

Office of the Deputy Commissioner for Patent Examination Policy

See MPEP 201.06(c).